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and Joseph O. Nguyen

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:		Case No. 09-61196 ASW
SANTA CLARA SQUARE, LLC,		Chapter 11
	Debtor.	[NO HEARING REQUIRED]

EAST WEST BANK, a California Corporation. Adv. Pro. No. _____

Plaintiff,

VS.

EMILY CHEN, an individual, HENRY NGUY, an individual, ALBERT WANG, an individual, JOSEPH O. NGUYEN, and individual, and DOES 1 through 10, inclusive,

Defendants.

**NOTICE OF REMOVAL OF LAWSUIT PENDING IN STATE COURT
TO BANKRUPTCY COURT (28 U.S.C. §1452)**

TO: EAST WEST BANK

PLEASE TAKE NOTICE that defendant Emily Chen, the designated representative of the

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1 above entitled Debtor duly appointed as such by order of the above entitled Court entered herein on
2 January 8, 2010, and defendants Henry Guy, Albert Wang, and Joseph O. Nguyen, members or
3 representatives of members of the Debtor, hereby remove the lawsuit entitled "East West Bank v.
4 Emily Chen, an individual, Hung Guy, and individual, Albert Wang, an individual, Joseph O.
5 Nguyen, an individual, and DOES 1-10," pending as Case No. CGC-10-498085 in the Superior
6 Court in and for the County of San Francisco, State of California, (the "Action") to the United States
7 Bankruptcy Court for the Northern District of California ("Bankruptcy Court") pursuant to 28 U.S.C.
8 § 1334 and § 1452(a) and Federal Rules of Bankruptcy Procedure, Rule 9027(a).

9 **I. SUMMARY OF THE ACTION AND THE BANKRUPTCY CASE**

10 The Action constitutes a proceeding to attempt to enforce purported guarantees by the
11 defendants in the Action, each and all of whom hereby remove the Action to the Bankruptcy Court,
12 made with respect to a claim by East West Bank against the Debtor herein.

13 The Debtor made its promissory note in favor of United Commercial Bank, the predecessor
14 in interest of East West Bank, which note was extended from time to time thereafter.

15 The promissory note is secured by a Deed of Trust encumbering Debtor's commercial
16 property consisting of approximately 12.6 acres with commercial buildings occupied by Kohl's
17 Department Stores, by YUM! Brands (Taco Bell), and by Bharat Bazaar.

18 Debtor and East West Bank dispute the value of the collateral. Debtor contends that the
19 value of the property exceeds any amount due to the Bank, and the Bank contends that the value is
20 less than the indebtedness.

21 Pursuant to proceedings in the Bankruptcy Court, the Debtor has commenced adequate
22 protection payments in the sum of \$51,854.00 which are intended to protect any interest of the Bank
23 in the collateral.

24 The amount of the claim of East West Bank is disputed. The Debtor contends that East West
25 Bank, and its predecessor, interfered with sales of the Property and failed to forebear enforcement
26

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1 action to allow consummation of sales as represented. The Bank denies those allegations.

2 The Debtor has timely filed its Chapter 11 Plan which provides for payment of the Bank's
3 claim, subject to the determination of such offsets as may be appropriate as a result of Debtor's
4 claims.

5 The Debtor is in the process of amending its Chapter 11 Plan to provide further specificity as
6 to a funding arrangement with Essex Trust which will provide certain funds for payment to East
7 West Bank.

8 The Chapter 11 Plan shall further provide for an abatement against prosecution of the Action
9 pending performance of the Chapter 11 Plan pursuant to which the claim of East West Bank will be
10 paid without resort to claims against the guarantors who remove this Action to the Bankruptcy Court
11 for determination of all issues related to the claim of East West Bank, and payment of such amount
12 as may be determined to be due.

13 The only pleading filed in the Action is the following:

Affirmative Pleading	Parties	Cause of Action	Documents
Action filed by East West Bank.	Plaintiff: East West Bank Defendants: Emily Chen, Hung Nguy, Albert Wang, and Joseph O. Nguyen	Breach of Guarantees	Complaint

18 The Action is not a proceeding before the United States Tax Court, and is not a civil action by a
19 governmental unit to enforce its police or regulatory power.

20 II. BASIS FOR REMOVAL

21 The Bankruptcy Court has jurisdiction over the Action pursuant to 28 U.S.C. §1334(b).

22 The Action is a core proceeding with the meaning of 28 U.S.C. §§157(b)(2)(A), (B), (C), (K),
23 (L), and (O), and 1334.

24 Removal of the Action is proper pursuant to 28 U.S.C. §1452(a) and Federal Rules of
25 Bankruptcy Procedure, Rule 27(a).

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Venue for the Action is proper in this Court under 28 U.S.C. §1452(a) because this Bankruptcy Court is the Bankruptcy Court located in the District where the nonbankruptcy court where the Action was formerly pending is located - San Francisco County Superior Court.

4 Removal will serve the interests of equity and judicial efficiency in that the determination of
5 the amount of the underlying debt, the value of the collateral, the manner of payment of the
6 underlying claim, the protection to be provided to the plaintiff pursuant to the Chapter 11 Plan and
7 such other orders as may be made by the Bankruptcy Court, and the abatement of further prosecution
8 of the Action, must occur in the Bankruptcy Court. In particular, the Action against the guarantors is
9 specifically predication upon the liability of the Debtor which is a matter within the exclusive
10 jurisdiction of the Bankruptcy Court (11 USC § 502). Also, the treatment of the claim under a
11 Chapter 11 Plan must occur in the Bankruptcy Court within the parameters of the Bankruptcy Code
12 (11 USC §§ 1129, 1141).

Attached hereto as Exhibit 1 is a true and correct copy of the pleading filed in the Action.
Dated: April 23, 2010

LAW OFFICES OF DEK KETCHUM

Dated: April 25, 2010

LAW OFFICES OF DEK KETCHUM

By Dek Ketchum

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